

EXHIBIT 31

From: Dinan, Christine (CRT)
To: Michael Rosman; Michelle Scott; Dale Conder
Cc: Braniff, Andrew (CRT); Gray, Juliet (CRT); Smith, K'Shaani (CRT); Crawford, Cecily (CRT)
Subject: Ultima
Date: Monday, April 25, 2022 4:08:41 PM
Attachments: Ultima Expert Report 220204 corrected 220422.pdf
Ultima Expert Report 220204 corrected 220422 (redline).pdf

Counsel,

Attached is a revised version of Dr. Wainwright's expert report, correcting typographical errors in the original version. No substantive changes have been made. I have attached a redlined version identifying the changes for your convenience, as well as a clean version.

We will refer to this corrected version of Dr. Wainwright's report going forward.

Thank you,
Christine

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she/her/hers
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Ultima Services Corporation,)	
)	
Plaintiff)	
)	
vs.)	2:20-CV-00041-DCLC-CRW
)	
)	
U.S. Department of Agriculture, et al.)	
)	
Defendants.)	
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February 4, 2022
(Corrected April 22, 2022)

III. There is Strong Evidence of Disparities Between Utilization and Availability in Aggregate U.S. Business Enterprise Activity

A key rationale for the advent of public sector policies such as the SBA 8(a) Program was the federal government's desire to mitigate its own passive participation in private sector discrimination in business enterprise activity.⁴² Therefore, it is important to examine the available evidence regarding how minority-owned businesses fare in the overall U.S. economy, to determine whether consistent disparities are observed in aggregate data. In order to do this, I present evidence from the U.S. Census Bureau's only past and present data collection efforts dedicated to MBEs.

The *Survey of Business Owners and Self-Employed Persons* (SBO) collected data on the number, sales, employment, and payrolls of businesses owned by minorities, women, and non-minority males. This survey was conducted every five years from 1972 to 2012 as part of the *Economic Census* program. Data from the 2012 SBO, the most recent available, were released in December 2015.⁴³

In mid-2018, the Census Bureau announced that the SBO would be discontinued and only partially replaced with a new survey called the *Annual Business Survey* (ABS).⁴⁴ Unfortunately, the ABS only counts firms with paid employees, as opposed to the SBO, which also counted nonemployer firms (often sole proprietorships and smaller corporations).⁴⁵ Data from the 2017 ABS were released in May 2020.⁴⁶ The SBO and ABS cover women and five groups of minorities: (1) Blacks, (2) Hispanics, (3) Asians, (4) Native Hawaiians and Other Pacific Islanders, and (5) American Indians and Alaskan Natives. Comparative information for non-minority male-owned firms is also included.⁴⁷

The SBO and ABS contain a wealth of information on the character of minority business enterprise in the U.S as a whole as well as more limited information for individual states and some sub-state divisions. Regardless of whether the SBO data or the ABS data is

⁴² *City of Richmond v. J. A. Croson Co.*, 488 U.S. 469, 492 ("Thus, if the city could show that it had essentially become a 'passive participant' in a system of racial exclusion practiced by elements of the local construction industry, we think it clear that the city could take affirmative steps to dismantle such a system.").

⁴³ U.S. Census Bureau (2018a, 2018b, 2018c, 2018d).

⁴⁴ U.S. Census Bureau (2018e).

⁴⁵ U.S. Census Bureau (2018f). In 2012, according to the SBO, there were about 5.1 million firms with paid employees and more than 22 million nonemployer firms.

⁴⁶ U.S. Census Bureau (2020c). In the American Community Survey data, discussed in Section IV, the unit of analysis is the business owner, or self-employed person. In the SBO and ABS data, the unit of analysis is the business itself rather than the business owner. Also, the unit of analysis in the SBO and ABS is the firm, rather than the individual establishment, unlike most other components of the *Economic Census*.

⁴⁷ The race and ethnicity categories used in the SBO and ABS differ in some respects from those used in the SBA 8(a) Business Development Program. In the SBO and ABS, Native Hawaiians are grouped with Asians and Pacific Islanders, rather than with Native Americans. Also, Subcontinent Asians are grouped with Asians and Pacific Islanders, rather than classified separately.

These disparities are all adverse and statistically significant. For Blacks, Hispanics, and Asians, they are large as well.

Table 3.1. Disparity Indexes Ratios from the 2012 Survey of Business Owners, United States, All Industries

	Number of Firms	Sales and Receipts (\$000s)	Employer Firms	Sales and Receipts (\$000s)	Employees	Payroll (\$000s)
	(1)	(2)	(3)	(4)	(5)	(6)
Panel A. Levels						
All Firms	27,179,380	11,964,077,871	5,136,203	10,964,584,749	56,058,563	2,096,442,212
Non-minority male	12,280,591	8,787,915,377	2,933,198	8,221,010,815	37,750,711	1,531,662,394
Black	2,584,403	150,203,163	109,137	103,451,510	975,052	27,689,957
Hispanic	3,305,873	473,635,944	287,501	379,994,999	2,329,553	70,855,704
Asian	1,917,902	699,492,422	481,026	627,532,399	3,572,577	110,543,615
Native Hawaiian & Pac. Islander	54,749	8,136,445	4,706	6,469,957	39,001	1,430,591
Amer. Indian & Alaska Native	272,919	38,838,125	26,179	31,654,165	208,178	6,994,509
Panel B. Column Percentages						
All Firms	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
Non-minority male	45.18%	73.45%	57.11%	74.98%	67.34%	73.06%
Black	9.51%	1.26%	2.12%	0.94%	1.74%	1.32%
Hispanic	12.16%	3.96%	5.60%	3.47%	4.16%	3.38%
Asian	7.06%	5.85%	9.37%	5.72%	6.37%	5.27%
Native Hawaiian & Pac. Islander	0.20%	0.07%	0.09%	0.06%	0.07%	0.07%
Amer. Indian & Alaska Native	1.00%	0.32%	0.51%	0.29%	0.37%	0.33%
Panel C. Disparity Ratios/Indexes						
	Column (2) ÷ (1)			(4) ÷ (3)	(5) ÷ ((3)	(6) ÷ (3)
All Firms	100.00			100.00	100.00	100.00
Non-minority male	162.56			131.29	117.92	127.93
Black	13.20			44.40	81.86	62.16
Hispanic	32.55			61.91	74.24	60.38
Asian	82.85			61.11	68.05	56.30
Native Hawaiian & Pac. Islander	33.76			64.40	75.93	74.48

Source: Author's calculations using 2012 SBO. Notes: (1) Figures are rounded. Rounding was performed subsequent to any mathematical calculations; (2) Excludes publicly owned, foreign-owned, and not-for-profit firms; (3) Totals for "All Firms" include firms that were equally non-minority/minority owned; (4) Statistically significant disparity indexes are italicized; (5) "n/a" indicates that data were not disclosed due to confidentiality or other publication restrictions.